APPEAL NO. 032363
FILED OCTOBER 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was scheduled for June 17 and was reset and held on August 19, 2003. The hearing officer resolved the disputed issues by deciding that no determination of impairment rating (IR) could be made and therefore the issues of supplemental income benefits (SIBs) are premature and returned the matter to the Texas Workers' Compensation Commission (Commission) to obtain a report on which a determination of IR can be made. The appellant/cross-respondent (claimant) appealed, disputing the determinations regarding the IR and arguing that the respondent/cross-appellant (self-insured) waived its right to contest the claimant's entitlement to SIBs. The self-insured responded, urging affirmance of the challenged determinations and arguing that the claimant's appeal was insufficient to challenge the IR determinations. The self-insured further argued that it disputed the IR within days of receiving the Commission's notice of the claimant's entitlement to SIBs and that the IR issue was never resolved. The self-insured appealed, challenging the hearing officer's finding that there was no valid IR. The self-insured argues that the 12% IR assigned initially by the Commission-selected designated doctor, Dr. M, to the claimant was assigned two months after the claimant reached statutory maximum medical improvement (MMI) and should be final. In his response, the claimant contends that the challenged determinations are supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

We find no merit in the self-insured's contention that the claimant's appeal was insufficient to challenge the IR determinations because the claimant failed to provide argument, legal authority, or rationale for his contention that the hearing officer's determinations regarding IR should be reversed. We have held that no particular form of appeal is required and an appeal, even though terse or inartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993. We have also held that appeals that lack specificity will be treated as attacks on the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. In the present case, the claimant's request for review clearly states that he is appealing the hearing officer's determinations regarding the IR and specifically identifies the findings of fact and conclusions of law being disputed. The claimant's challenge of the IR determinations is sufficient to be considered an appeal.

The parties stipulated that the self-insured accepted liability for the _____, injury to the claimant and that Dr. M served as a Commission

designated doctor for the claimant's _____, injury. At issue was whether the claimant is entitled to SIBs for the first through the eighth quarters; whether the self-insured waived its right to contest the claimant's entitlement to the SIBs quarters in question by failing to timely request a benefit review conference; and the claimant's IR. The claimant testified at the CCH that he injured his chest, low back, and legs when he was hit by a forklift. Further, the claimant testified that he underwent an Intradiscal Electrothermal Therapy (IDET) procedure on December 22, 2000; a fusion on November 28, 2001; and a revision of the fusion on April 25, 2003. The hearing officer's finding that the Commission determined that the claimant reached MMI on March 13, 2000, by operation of the 1989 Act was not disputed. The record reflects that after examining the claimant on May 31, 2000, Dr. M assigned an IR of 12%. On July 23, 2002, Dr. M responded to a letter of clarification sent by the Commission noting that the IDET procedure and the lumbar spine surgery, involving decompressive laminectomy/foraminotomy and fusion at multiple levels, would probably change the IR but a reevaluation would be necessary. On August 26, 2002, after reexamination of the claimant, Dr. M completed an amended Report of Medical Evaluation (TWCC-69) certifying that the claimant had a 22% IR.

IMPAIRMENT RATING

The hearing officer determined that Dr. M rescinded his prior certification of 12%; that Dr. M was not qualified to reexamine the claimant as a designated doctor in August of 2002; that Dr. M's amended certification of 22% is not in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides); that the IR certified by Dr. M is not entitled to presumptive weight and is not adopted; and that there is no other valid report in the record on which a determination of IR can be made. The self-insured argues, citing Fulton v. Associated Indemnity Corporation, 46 S.W.3d 364 (Tex. App.-Austin 2001, pet. denied), that IRs become final at statutory MMI and cannot be revisited or amended. In Fulton, *supra,* the court held that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) (90-day Rule), which restricted the time period for disputing an IR, was invalid because it also implicitly restricted the statutory time period for assessing a final date of MMI. While we recognize the need for finality in MMI and IR determinations, we find no authority applicable to this case[1] to support the self-insured's contention on appeal that the date of statutory MMI is the cut-off for determining the IR.

Rule 130.6(i) provides that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight as it is part of the doctor's opinion. The hearing officer's determination that because Dr. M rescinded his prior certification the Commission does not adopt the IR of 12%, is not in error. Consequently, the self-insured's argument that the correct IR is 12% IR certified by Dr. M is rejected because that IR had been rescinded.

[1] We note that Section 408.123(d) has been added to provide for a time period for disputing MMI and IR in specific instances, however, the effective date of the statutory change makes it not applicable to this case.

Pursuant to Section 408.0041 and Rule 130.5(d)(2), the Commission is charged with the responsibility of ensuring that a designated doctor is still qualified before scheduling an appointment with the designated doctor to reexamine the claimant. Rule 130.5(d)(2) became effective on January 2, 2002, and does not provide exceptions for claims in progress prior to that time. Indeed, the wording of Rule 130.5(d)(2) contemplates using a previously selected designated doctor "if the doctor is still qualified." However, if the doctor is no longer qualified, selection of a new designated doctor is mandated. *See* Texas Workers' Compensation Commission Appeal Number 022277, decided October 23, 2002.

Section 408.0041(b) provides in relevant part that the designated doctor should be one:

> [W]hose credentials are appropriate for the issue in question and the injured employee's medical condition. The designated doctor doing the review must be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of practice of the designated doctor.

It is undisputed that Dr. M is a chiropractor. The claimant had spinal surgery prior to the date of the reexamination of the claimant and had additional spinal surgery after the date of the reexamination. Accordingly, we find no merit in the claimant's dispute of the hearing officer's finding that there is no showing that Dr. M was qualified to serve as a designated doctor in the claimant's claim at the time of the second examination on August 25, 2002. *See* Texas Workers' Compensation Commission Appeal No. 030737, decided May 14, 2003.

The hearing officer's determination that the Commission does not adopt the 22% IR of Dr. M in part because Dr. M was not qualified to reexamine the claimant as a designated doctor in August of 2002 is not in error. The hearing officer additionally found that Dr. M's August 26, 2002, report of impairment is not in accordance with the AMA Guides but given that we affirm the determination that he was not qualified to conduct the reexamination, his rating will not be addressed further. It is undisputed that the record did not contain another IR certified by any other doctor. Because there was no other IR in the record, the hearing officer did not err in determination that "the matter is returned to the Commission to obtain a valid report on which a determination of impairment can be based."

SIBs

Given our affirmance of the hearing officer's determination that he could not resolve the IR issue, we likewise affirm the determination that the issues of entitlement to SIBs are premature. *See* Texas Workers' Compensation Commission Appeal No. 030705, decided May 12, 2003, and Texas Workers' Compensation Commission Appeal No. 000317, decided March 29, 2000.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

U.S. CORPORATION COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge